

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

05 • 10080 DPW

MEDICAL IMAGING SOLUTIONS GROUP, INC.

MT Alexander

v.

C.A. NO.:

ALKOMED TECHNOLOGIES, LLC.

COMPLAINT

RECEIPT # _____
AMOUNT \$ 150
SUMMONS ISSUED yes
LOCAL RULE 4.1 1
WAIVER FORM _____
MCF ISSUED _____
BY DPT. CLK. FOW
DATE 1/12/05

1. Medical Imaging Solutions Group, Inc. ("MIS") is a corporation registered in the State of Georgia, with a principal place of business located at 229 Arnold Mill Road, Woodstock, Georgia.
2. Alkomed Technologies, LLC ("Alkomed") is a Massachusetts Domestic Limited Liability Company with a principal place of business located at 298 Commonwealth Avenue, Boston, Massachusetts.
3. This complaint arises out of three contracts for the purchase/rental of medical imaging equipment between MIS and Alkomed.
4. Alkomed has sufficient minimum contacts with the Commonwealth of Massachusetts so as to give this court jurisdiction over this entity.
5. This court has jurisdiction under 28 U.S.C. § 1332 because there is complete diversity of jurisdiction between the parties and the amount in controversy exceeds the sum of \$75,000.00.

FACTS

6. MIS is in the business of sales and service of medical imaging equipment, and is one of the largest direct purchasers for used MRI and CT equipment in the United States.
7. Alkomed is a known source of used MRI and CT equipment.
8. In or around March of 2003, representatives from MRI and Alkomed began discussions to build a relationship between the two companies.
9. As part of these discussions, MIS indicated that it was in need of a Siemens Harmony MRI Shimming Tool and Siemens Harmony Ramp Power Supply, Probe, and Cables, (hereinafter "tools").
10. Alkomed indicated that it could provide this equipment to MIS for terms to be negotiated.

The parties discussed options of either leasing or purchasing the equipment, with discussions of MIS utilizing the equipment on "loan" in the immediate future prior to finalizing the negotiations.

11. MIS accepted Alkomed's offer to provide the aforementioned equipment, and discussed a time frame within which it expected to receive the equipment.
12. MIS and Alkomed contemporaneously entered into a separate contract (contract #042502) for the purchase of a 1997 Siemens Somatom Plus 4 CT scanner (hereinafter "scanner").
13. Pursuant to this contract (#042502) MIS paid a \$10,000.00 deposit to "secure" the aforementioned scanner.
14. Shortly after entering into these contracts, MIS was approached by one of its largest customers to supply, install and perform maintenance on certain imaging equipment. This maintenance required use of the "tools" that Alkomed had contracted to provide.
15. MIS inquired of Alkomed as to whether the "tools" could be provided within "a week or so," and were informed that they could be provided in that time.
16. Reasonably relying on this assurance, MIS contracted with its potential client to supply, install, and perform maintenance on said equipment.
17. Despite Alkomed's assurances, the "tools" were never delivered. MIS was unable to fulfill its commitments to its client, resulting in the loss of this client and significant revenue from this client from lost sales and maintenance contracts.
18. Despite Alkomed's receipt of the \$10,000.00 deposit for the scanner, Alkomed sold the scanner to a third party. At no time prior to receipt of the deposit were the terms and conditions of the contract amended or cancelled.
19. Thereafter, on or about April 28, 2003, the parties negotiated a third contract (#042803) to purchase and rent other equipment, specifically purchase of a Siemens Harmony MRI Shimming Tool and rental of a Siemens Harmony Ramp Power Supply, Probe, and Cables.
20. The third contract (#042803) acknowledged receipt of the \$10,000.00 previously supplied.
21. Despite signing the third contract, Alkomed, subsequently attempted to change the terms of the contract and require a larger deposit prior to delivery of the equipment.
22. MIS refused to accept the renegotiated terms and demanded return of its deposit.
23. To date, Alkomed has refused return of MIS's deposit.

COUNT I
Breach of Contract

24. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 23 as set forth fully herein.
25. Alkomed's failure to provide the "tools" as contracted to between the parties constitutes a breach of contract.

COUNT II
Breach of Contract

26. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 25 as set forth fully herein.
27. Alkomed's sale of the equipment covered in contract # 42502 despite receipt of a deposit constitutes a breach of contract.

COUNT III
Breach of Contract

28. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 27 as set forth fully herein.
29. Alkomed's failure to perform pursuant to the terms of contract # 42803 despite receipt of a deposit constitutes a breach of contract.
30. There is no justifiable reason of fact of law for Alkomed to have refused performance of the terms of the contract.

COUNT IV
Unjust Enrichment

31. Plaintiff restates and incorporates by reference the allegations contained in paragraphs 1 through 29 as set forth fully herein.
32. Alkomed's retention of Plaintiff's deposit despite its refusal to perform its contractual obligations constitutes unjust enrichment.
33. There is no justifiable reason of fact or law for Alkomed to have refused return of Plaintiff's deposit, after refusing to perform its contractual obligations.

WHEREFORE, Plaintiff MEDICAL IMAGING SOLUTIONS GROUP, INC., respectfully demands

1. Judgment against the Defendant
2. Compensatory damages in an amount to be determined at trial and sufficient to confer judgment upon this Honorable Court;
3. Consequential damages in an amount to be determined at trial and sufficient to confer judgment upon this Honorable Court;
4. Costs, including but not limited to reasonable attorney's fees, and expenses; and
5. Such other relief as this Honorable Court deems just and proper.

MEDICAL IMAGING SOLUTIONS GROUP, INC.
By its Attorneys
BLISH & CAVANAGH

A handwritten signature in black ink, appearing to read "Thomas E. Romano", is written over a horizontal line.

Thomas E. Romano, BBO#631985
30 Exchange Terrace
Providence, RI 02903
(401) 831-8900 (phone)
(401) 490-7640 (fax)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Medical Imaging Solutions Group, Inc.
v. Alkomeid Technologies, LLC
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

<input type="checkbox"/>	I.	160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
<input type="checkbox"/>	II.	195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
<input checked="" type="checkbox"/>	III.	110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 246, 310*, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
<input type="checkbox"/>	IV.	220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
<input type="checkbox"/>	V.	150, 152, 153.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
N/A
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐

A.	If yes, in which division do <u>all</u> of the non-governmental parties reside?
	Eastern Division <input checked="" type="checkbox"/> Central Division <input type="checkbox"/> Western Division <input type="checkbox"/>
B.	If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
	Eastern Division <input type="checkbox"/> Central Division <input type="checkbox"/> Western Division <input type="checkbox"/>
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions) N/A
YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas E. Romano
ADDRESS Blish & Cavanagh LLP, 30 Exchange Terrace, Providence, RI 02903
TELEPHONE NO. 401 / 831-8900

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Medical Imaging Solutions Group, Inc.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

Thomas E. Romano

(c) Attorney's (Firm Name, Address, and Telephone Number)

Blish & Cavanagh LLP 401 / 831-8900
30 Exchange Terrace, Providence, RI 02903

DEFENDANTS

Alkomed Technologies, LLC

County of Residence of First Listed Defendant Suffolk
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332

Brief description of cause:

Breach of Contract - Commercial

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$370,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

N/A

(See instructions):

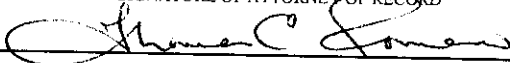
JUDGE

DOCKET NUMBER

DATE

1/6/05

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE